

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into Competition for
Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition for
Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)
**(FCC Triennial Review
Nine-Month Phase)**

**ADMINISTRATIVE LAW JUDGE'S RULING
CLARIFYING APPLICABILITY OF PROTECTIVE ORDER
AND DESIGNATING RESPONDENTS**

This ruling is issued to clarify the applicability of the Protective Order adopted in the above-captioned proceeding and to officially designate as respondents those carriers from whom data has been solicited by Assigned Commissioner Susan P. Kennedy.

Clarification of the Protective Order's Applicability

By an October 16, 2003 ruling, a Protective Order was adopted for this proceeding. The Protective Order incorporated revisions proposed by the Office of Ratepayer Advocates (ORA) that were intended to convey the principle that Commission staff (which includes ORA) is not bound by the Protective Order. The Commission has consistently held that restrictive protective orders covering its staff are superfluous in light of obligations on staff to protect confidential data set forth in Pub. Util. Code § 583 and General Order 66-C. Protective Orders that bind staff have the potential to impair the Commission's ability to execute its

regulatory functions efficiently, and on a more theoretical level, to undermine the legitimacy and operative authority of existing statutes and rules that govern Commission practice.

Thus, the adopted Protective Order is intended to apply to parties other than ORA with respect to the protection of confidential information. In this regard, however, the “Definitions” section (on page 1 of the Protective Order) contains a statement defining “party” as “any party to this proceeding, including any parent, subsidiary, affiliate or agent.” In the interests of clarity, an additional clause shall be added to the end of that sentence expressly affirming that ORA is not covered under the Protective Order. The additional clause shall read as follows:

“excluding, however, ORA or any other Commission staff, which are not bound by this Protective Order. ORA and other Commission staff are already subject to nondisclosure provisions applicable to confidential information pursuant to Cal. Pub. Util. Code § 583 and General Order (G.O.) 66-C.”

Designation of Carriers as Respondents to the Proceeding

On October 22, 2003, Commissioner Kennedy transmitted by letter to telecommunications carriers throughout California a directive to submit pertinent data necessary in conducting the trigger analysis for this proceeding. As stated in Commissioner Kennedy’s letter, carriers receiving the letter soliciting trigger-related data shall be made respondents to the proceeding. This ruling formally designates such carriers as respondents to this proceeding. Respondents are thus legally responsible for complying with Commissioner Kennedy’s information request. The list of respondents who received Commissioner Kennedy transmittal letter are posted on the Commission’s website at:

<http://www.cpuc.ca.gov/static/industry/telco/datarequests/index.htm>

As noted in Commissioner Kennedy's letter, any respondent that wishes to participate more fully in the proceeding may request to be made an active party to the proceeding or to be placed on the "information only" portion of the service list.

IT IS RULED that:

1. The adopted Protective Order for this proceeding is clarified to add the clause as set forth above expressly affirming that the Office of Ratepayer Advocates is not covered by the Protective Order, but is already subject to nondisclosure provisions applicable to confidential information pursuant to Cal. Pub. Util. Code § 583 and General Order 66-C.

2. Carriers receiving Commissioner Kennedy's October 22, 2003 letter soliciting trigger-related data (as posted on the Commission's website) are hereby designated respondents to the proceeding and thus are legally required to respond to the Commissioner's solicitation for data.

Dated October 31, 2003, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Clarifying Applicability of Protective Order and Designating Respondents on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail in the FCC Triennial Review Nine-Month Phase.

Dated October 31, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.